U.S. Department of Justice

United States Attorney
Southern District of New York

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April 19, 2013

BY EMAIL
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Re: *United States ex rel. Anti-Discrimination Center v. Westchester County*, 06 Civ. 2860 (DLC) (GWG)

Dear Counsel:

We write in connection with the continuing obligation of the County Executive to "promote" legislation to prohibit source-of-income discrimination, as required by the Settlement entered in the above-referenced matter. As you know, by Order dated May 3, 2012, the district court ruled that the County was in "unambiguous breach" of the Settlement, as a result of the County Executive's veto of the legislation in 2010. In the May 3 Order, the Court ordered the County Executive to "[request] that the legislature reintroduce the prior legislation, [provide] information to assist in analyzing the impact of the legislation, and [sign] the legislation passed." (Order of May 3, 2012 (the "Order").)

The Second Circuit affirmed the district court on every point and rejected every one of the County's arguments by Opinion dated April 5, 2013, in which it ruled that "the County violated the terms of the consent decree." (Opinion, *United States ex rel. ADC v. Westchester County, New York*, 12-2047-cv (2d Cir. Apr. 5, 2013) ("Opinion") at 2.) The Second Circuit expressly ruled that "the County breached its duty to promote under the consent decree." (Opinion at 14.) Finally, the Second Circuit refused to permit the County "to shirk its voluntarily agreed to obligations, made less than four years ago, with no showing that the objects of the consent decree have been obtained and strong evidence indicating that they have not been." (Opinion at 21-22.)

Following the Second Circuit's decision, we wrote to you on April 5, 2013, asking you to identify what steps the County intended to take to remedy the breach of the Settlement Agreement. You responded by email on April 10, 2013, attaching a letter from the County Executive to the Board of Legislators, in which the County Executive reiterates his request that the Board reintroduce source-of-income legislation and commits to providing information relating to the proposed legislation, but nothing more.

The County Executive's letter is insufficient to meet his obligation to "promote" under the Settlement Agreement. The Second Circuit expressly ruled that the County Executive's obligations under this provision are broad:

> [T]he duty to promote is actually broader than a duty merely to sign a legislative enactment once passed by the Board. The duty to promote imposes affirmative duties on the Executive even before legislative enactment, whereas a duty simply to sign would only impose a duty on the Executive after the Board had passed the legislation in question.

(Opinion at 11.) The County Executive has failed to meet his obligations under the Second Circuit's ruling, leaving the Board of Legislators uncertain as to what legislation the County Executive would sign. Consequently, following the Second Circuit's decision on April 5, 2013, the Board announced that it had voted to direct the County Executive to submit his version of the source-of-income legislation. The County Executive has failed to do so; nor has he informed the Board that he would sign such legislation. Further, acting directly at odds with his obligation to promote the legislation, the County Executive issued a press release on April 5, 2013, that objected to the legislation, falsely stating that it would turn a "worthwhile voluntary program [Section 8] into a mandatory one that would compel every owner of a house or apartment to do business with the federal government – and take on all the rules and regulations that entails – upon a tenant's presentation of a Section 8 voucher." Accordingly, not only did the County Executive veto the legislation before him on June 25, 2010, but now that the Second Circuit has upheld the district court's decision he has made no legitimately reasonable effort to persuade the current Board of Legislators to promulgate and adopt legislation and has, to the contrary, derogated the legislation.[1] The County Executive's failure to promote source-of-income legislation is the primary reason such legislation has not been enacted.

Accordingly, we demand that the County Executive take the following steps to promote the legislation: (1) submit the 2010 Legislation to the Board, instead of merely calling upon the Board to reintroduce the legislation; and (2) agree in writing, to the undersigned and the Board, to sign the 2010 Legislation if that legislation is passed. We reserve the right to ask for further steps if circumstances change.

The County Executive must agree to take these steps by April 25, 2013. If he does not do so, we will seek the Court's intervention to compel the County Executive to comply with his obligations to promote the legislation, and as necessary and appropriate we may seek a contempt ruling. As we have previously noted, the Supreme Court has instructed that contempt fines shall first be imposed against the unit of government, and then, if such fines do not ensure compliance, directly against officeholders. Thus, any contempt fines would be levied first against the County, and the County Executive may subsequently be held in contempt if contempt against the

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[1] On April 10, 2013, moreover, the County Executive wrote to the Board of Legislators requesting that it authorize suit against the Department of Housing and Urban Development, including with his letter a Fiscal Impact Statement and a SEQR Review Notice, and a second letter analyzing at length the County Executive's reasons for the legislation. The level of effort put into that request poses a stark contrast to the level of effort put into the County Executive's meager attempts to promote source of income legislation – even though he is under a Court order to do so.

County fails to produce compliance. *See United States v. Spallone*, 493 U.S. 265, 276-80 (1990) (approving district court's contempt fines against City of Yonkers, but concluding that holding against individual office-holders in contempt was inappropriate unless fines against Yonkers failed to result in compliance).

Finally, we note that the remedies we seek here are separate and independent from HUD's most recent notice to you, by letter dated March 25, 2013, that the County stands to lose approximately $7.4 million in federal funds for FY 2011, with the prospect of losing additional funds in FY2012 and FY2013, because it has failed to produce an Analysis of Impediments acceptable to HUD as required by the Settlement Agreement.

If we do not hear from you by April 25, 2013, making the commitments requested above, we will take appropriate action.

Thank you for your prompt attention to this matter.

Sincerely,

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United States Attorney

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